IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4769 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISINGH @ GYANSINGH MEGHASINGH NIZAR (PUNJABI)

Versus

STATE OF GUJARAT

Appearance:

MISS SUMANT PAHWA for M/S THAKKAR ASSOC. for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 15-3-2000 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and learned AGP for the State. I have also perused the material on record. But learned advocate for the petitioner has restricted her argument on the point that representation has been made by the petitioner through his advocate on 4-5-2000 and same has not been decided by the authority on 12-5-2000 and, therefore, there is a delay. Learned Addl. Govt. Pleader has fairly admitted the same. Learned advocate for the petitioner has submitted that since the detenu has been shifted from Porbandar Jail to Jamnagar Jail, writ may be sent to Jamnagar Jail.

4. In the instant case, it appears that though representation has been sent on 4-5-2000, it remained undecided till 12-5-2000. So, there is a delay. The Apex Court relying upon a decision of the Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, (1991) 1 SCC 476 : (1991 AIR SCW 362), has held in a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684 as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

It has been further held by the Apex Court in para 9 as under:

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the test is not the duration or range of delay, but how it is explained by the authority concerned."

5. It is to be noted that in this case no satisfactory explanation has been put forward by the respondents explaining satisfactorily the delay caused in deciding the representation. As representation of the petitioner has not been decided by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

6. In view of the above, the petition is allowed. The order of detention dated 15-3-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Harisingh @ Gyansingh Meghasingh Nijar (Punjabi) is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs. Writ be sent to Jamnagar Jail.

(R.P.DHOLAKIA,J.)
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